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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

1 Laurence F. Padway, #89314
2 Law Offices of Laurence F. Padway
3 1516 Oak Street, Suite 109
4 Alameda, California 94501
5 Telephone: (510)814-0680
6 Facsimile : (510)814-0650

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8 Attorneys for plaintiff
9 Cinda Kroll

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 C V No. 11 3863
14

15 COMPLAINT FOR
16 ERISA BENEFITS AND FOR
17 INTEREST DUE

18 CINDA KROLL,

19 Plaintiff,

20 vs.

21 KAISER FOUNDATION HEALTH PLAN
22 LONG TERM DISABILITY PLAN AND
23 METROPOLITAN LIFE INSURANCE
24 COMPANY,

25 Defendants.
26 _____ /

27 Comes now Cinda Kroll alleging of defendants as follows:

28 **Jurisdiction**

29 1. This suit seeks review of a failure to extend benefits under a long term disability
30 plan covered by ERISA, 28 U.S.C. 1132. Federal jurisdiction arises under 28 U.S.C. 1132(f).

31 **First Claim for Relief - ERISA Benefits**

1 2. Ms. Kroll is a beneficiary of Kaiser Foundation Health Plan Long Term Disability
2 Plan which resides within this judicial district. The plan is covered by the Employee Retirement
3 Income Security Act of 1974.

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6 3. Defendant Metropolitan Life Insurance Company is an insurer which acts as the
7 claims administrator for the plan and is responsible (1) for determining the claim in issue and (2)
8 paying it.

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10 4. Ms. Kroll became disabled on February 7, 2006, during her employment with
11 Kaiser Foundation and while covered under the plan which provides for payment in the event of
12 disability.

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14 5. Ms. Kroll applied for long term disability benefits under the plan and her claim
15 was denied on January 5, 2007.

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17 6. Ms. Kroll appealed that denial, and the appeal was denied on June 18, 2008.

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19 7. Ms. Kroll brought suit and judgment was entered in her favor on May 13, 2011 for
20 benefits due during the “own occupation” period of disability. The Court remanded the case to the
21 Plan for a determination of “any occupation” benefits, for the time period commencing August 7,
22 2008 and continuing to date. Through her counsel, Ms. Kroll inquired of the Plan on April 4, 2008
23 as to whether or not it desired to proceed with a separate review for “any occupation” benefits and
24 offered to provide any information required for that purpose. On April 12, 2011, Ms. Kroll’s counsel
25 wrote to counsel for the Plan again requesting information from the plan as to any information it
26 needed to process the “any occupation” claim. On April 21, 2011. Ms. Kroll, again through her
27 counsel, emailed counsel for the plan and requested any forms which the plan needed to be
28 completed for the “any occupation” review, and noted that the time for Metlife to complete the “any

1 occupation” review would be 45 days from the entry of the Court’s order granting Ms. Kroll’s
2 motion for summary judgment on March 31, 2011. That order established Ms. Kroll’s right to “own
3 occupation” benefits, and therefore made the issue of “any occupation” benefits ripe for
4 determination even if the plan had not evaluated the issue prior. In order to provide information to
5 the plan to evaluate the claim, and in the absence of the plan providing any forms for Ms. Kroll to
6 complete, on June 2, 2011, Ms. Kroll, through her counsel, forwarded 966 pages of updated medical
7 records from Kaiser for Metlife to consider in connection with its evaluation of “any occupation”
8 benefits. Ms. Kroll’s counsel subsequently also forwarded a statement explaining why she is unable
9 to work in any occupation. The plan has not (1) provided any comment or evaluation on any of the
10 material supplied by Ms. Kroll (2) provided any forms to be completed (3) requested an extension of
11 time and (4) the plan has not made any determination on the claim. The time for the plan to do so
12 has expired, and Ms. Kroll has therefore exhausted her administrative remedies.

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14 8. Defendants have not made a determination on the “any occupation” benefits and
15 the time to do so has passed. At all times relevant hereto, Ms. Kroll was disabled and she remains
16 disabled as defined by the Plan.

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18 9. Ms. Kroll has been compelled to retain counsel to collect the benefits owed, and
19 is entitled to reasonable attorneys fees under ERISA in an amount dependent upon the extent of
20 litigation required and estimated at \$150,000 through trial.

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22 Wherefore, Ms. Kroll prays for relief as set forth below.

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25 **Second Claim for Relief - California Insurance Code 10111.2**

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27 10. Ms. Kroll incorporates the allegations of the first claim for relief as if there were
28 set forth here in full.

1 11. Under California Insurance Code 10111.2, Ms. Kroll is entitled to a payment at
2 the rate of 10% per annum for each disability payment due her under the insurance policy issued by
3 Metropolitan Life Insurance Company to the Plan which is made more than 30 days after it is due.

4

5 12. "Any Occupation" payments should have continued under the policy of insurance
6 and are due from August 7, 2008. The 10% interest is due on all payments which were due to be
7 made after that date.

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9 Wherefore, Ms. Kroll prays for relief as set forth below:

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Prayer for Relief

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Wherefore, Ms. Kroll prays for relief as follows:

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16 1. For benefits due according to proof, together with prejudgment interest in an
amount to be determined in the discretion of the Court, or at 10% per annum, compounded monthly.

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19 2. For prejudgment interest according to proof, or at 10% per annum, compounded
monthly, as provided under California Insurance Code Section 10111.2;

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3. For court costs and attorneys fees according to proof; and

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4. For such other and further relief as the court deems just and proper.

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Dated: August 4, 2011



Laurence F. Padway
Attorney for Cinda Kroll, plaintiff

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